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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,988	10/11/2001	Durward I. Faries JR.	1322.0046C	7339

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EXAMINER

BOCKELMAN, MARK

ART UNIT PAPER NUMBER

3762

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/973,988

Applicant(s)

FARIES ET AL.

Examiner

Mark W Bockelman

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on election of 5-13-2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 and 41-64 is/are pending in the application.
- 4a) Of the above claim(s) 1-13, 17, 20-22, 41-50, 53 and 56-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-16, 18, 19, 51, 52, 54, 55 and 59-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2-7-2002, 4-28-2003, 10-17-2003, 5-14-2004, 7-6-2004
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of group I Species VI, claims 14-16, 18-19, 51-52, 54-55, 59-64 in the reply filed on 5-13-2004 is acknowledged.

Claims 1-13, 17, 20-22, 41-50, 53, 56-58 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5-13-2004.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14, 18, 19, 51, 54, 55 are rejected under 35 U.S.C. 102(b) as being anticipated by Diedrich USPN 5,829,880, FR 2711,393 or DE3709122. Each of the references show a temperature sensor in a T- tube with a cover and a securing means with some type of recess (threading etc) for securing the probe in the t-tube. Applicant's statements of intended use provide no distinguishing structure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14 and 51 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Buckstein USPN 1, 479, 451 (alone or in view of Lester USPN 4,121, 574 or Ruhl). Buckstein teaches an in line member for measuring temperature in an iv system with a fitting 50 with first and second connectors 58 and 61 with a flow path in the housing and a connection port 49, 55, 56 and a temperature sensor in the form of a thermometer which generates a visible signal that can facilitate electronic display by either indicating to a physician a reading to be entered into a computer or attaching a thermometer reader to measure the level of mercury. Alternatively to have used a digital thermometer, which are notoriously old and well known, in place of the manual thermometer to generate an electronic display would have been obvious to one of ordinary skill in the art.

Claims 15-16, 52, 59- 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buckstein USPN 1,479,451 in view of Lester USPN 4,121,574 and/or Ruhl USPN 4,009,615. As noted above Lester and Ruhl teach electronic displays with Lester also teaching printing to keep records. Such displays and recording means are conventional to the temperature monitoring art and are thus considered obvious.

Claims 18, 19, 54, 55 rejected under 35 U.S.C. 103(a) as being unpatentable over Buckstein USPN 1,479,451 in view of Lester USPN 4,121,574 and/or Ruhl USPN 4,009,615 and further in view of FR 2711,393 or DE3709122.

Applicant differs from the collective teachings of Buckstein and Lester and Ruhl in reciting a cover/ receptacle and a securing means with a recess for interfacing with the fluid FR 2711393 teaches a securing means with a recess cavity and a cover 300, and DE 3709122 teaches a similar embodiment with cover 7. Buckstein teaches a recess in the form of a thread for receiving the probe. To have provide Buckstein with a digital thermometer and a cover for sterility purposes would have obvious to one in the temperature sensing art.

Claims 15, 16, 52, 59-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Diedrich USPN 5,829,880, FR 2711,393 or DE3709122.

Applicant differs from each of the base references since none show an electronic display however such displays are conventional. Applicant also differs in reciting a printer or recording means, which is also considered to be conventional for keeping records of temperature fluctuations. To have included these features in the base references would have been conventional.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W Bockelman whose telephone number is (703)-308-2112. The examiner can normally be reached on Monday - Thursday 10-8:30.

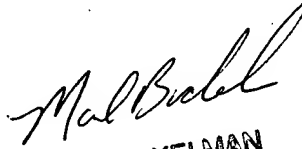
Art Unit: 3762

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MWB

September 6, 2004


MARK BOCKELMAN
PRIMARY EXAMINER